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EJS 44 (Rev. 1/07) (case rev. 1-16-04)

## **CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

<b>I. (a) PLAINTIFFS</b>		<b>DEFENDANTS</b>																																																																																													
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(c) Attorney's (Firm Name, Address, and Telephone Number)		Attorneys (If Known)																																																																																													
MILBERG WEISS LLP, JEFF S. WESTERMAN (SBN 94559) One California Plaza, 300 S. Grand Avenue, Suite 3900 Los Angeles, CA 90071-3149 (213)-617-1200																																																																																															
<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)																																																																																													
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<b>VI. CAUSE OF ACTION</b>		Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Sherman Act 15 USC Section 1																																																																																													
		Brief description of cause: Price Fixing																																																																																													
<b>VII. REQUESTED IN COMPLAINT:</b>		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$																																																																																												
<b>VIII. RELATED CASE(S) IF ANY</b>		PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE". CV 07-5634: CV 07-5821: CV 07-6219; CV 07-6417; CV 08-0339; CV 08-1140																																																																																													
<b>IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)</b> (PLACE AND "X" IN ONE BOX ONLY)		<input checked="" type="checkbox"/> SAN FRANCISCO/OAKLAND	<input type="checkbox"/> SAN JOSE																																																																																												
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E-filing

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5 Los Angeles, CA 90071-3149  
6 Telephone: (213) 617-1200  
7 Facsimile: (213) 617-1975

8 MILBERG WEISS, LLP  
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10 ANDREW MORGANTI, ESQ.  
11 One Pennsylvania Plaza  
12 New York, NY 10119-0165  
13 Telephone: (212) 594-5300  
14 Facsimile: (212) 868-1229

15 Attorneys for the Plaintiff and the Class

16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18 SAN FRANCISCO DIVISION

EDI

19 JASON GREGORY TURNER, individually  
20 and on behalf of all others similarly situated,

Case No. 14-44

21 Plaintiff,

CLASS ACTION COMPLAINT

22 vs.

23 ALL NIPPON AIRWAYS, JAPAN AIRLINES  
24 INTERNATIONAL, and AMERICAN  
25 AIRLINES, INC.,

26 JURY TRIAL DEMANDED

27 Defendants.

Pursuant to the Federal Rules of Civil Procedure, Plaintiff, on behalf of himself and all others similarly situated, hereby brings this action for treble damages and injunctive relief under the federal antitrust laws of the United States, Section 1 of the Sherman Antitrust Act of 1890, 15 U.S.C. § 1 (“Sherman Act”) and Sections 4 and 16 of the Clayton Antitrust Act of 1914, 15 U.S.C. §§ 15, 26 (“Clayton Act”) against Defendants. Plaintiff complains and alleges upon information and belief except as to those paragraphs applicable to the named Plaintiff, which are based on personal knowledge, as follows:

#### NATURE OF THE ACTION

1. This action arises from a conspiracy among certain airlines to fix, raise, maintain, and/or stabilize prices for long haul passenger flights (“Passenger Air Transportation”) and for fixed fuel surcharges on this transportation (“Fuel Surcharges”) between United States and Japan. Fuel surcharges are fees charged to passengers by airlines purportedly to compensate the airlines for increased fuel costs. As alleged herein, Defendants agreed to subscribe to the same index to set fuel surcharges despite having different cost structures, including different fuel hedging strategies.

2. Plaintiff, on behalf of all persons and entities that purchased Passenger Air Transportation, to and from the United States, from any of the Defendants and their co-conspirators or any predecessor, subsidiary, or affiliate of each, at any time during the period from April 15, 2003 to August 1, 2007 (the “Passenger Fare Transportation Class Period”) and February 1, 2005 to August 1, 2007 (the “Fuel Surcharge Class Period”), bring this action to recover treble damages and injunctive relief for violations of the United States antitrust laws.

3. This action arises from Defendants colluding with each other to fix, raise, maintain, and/or stabilize prices for passenger fuel surcharges associated with, at least, one segment between the United States and the relevant market.

4. Because of this unlawful conduct and conspiracy, Plaintiff and other members of the Class paid artificially inflated prices for international Passenger Air Transportation and

1 passenger fuel surcharges. Plaintiff and other members of the Class purchased those services  
2 from Defendant and have been damaged thereby.

3       5. Plaintiff bring this action to recover treble damages and injunctive relief for  
4 violations of Section 1 of the Sherman Act of 1890 (“Sherman Act”), 15 U.S.C. § 1 pursuant to  
5 Sections 4 and 16 of the Clayton Act of 1914 (“Clayton Act”), 15 U.S.C. §§ 15, 26, and various  
6 state consumer protection statutes.

## **JURISDICTION AND VENUE**

8       6.     This Complaint is brought under Sections 4 and 16 of the Clayton Act, 15 U.S.C.  
9 §§ 15 and 26, to obtain injunctive relief and to recover treble damages and the costs of this suit,  
10 including reasonable attorneys' fees, against Defendants for the injuries sustained by Plaintiff  
11 and the members of the Class by reason of Defendants' violations of Section 1 of the Sherman  
12 Act, 15 U.S.C. §§ 1.

13       7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and  
14 1337, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26.

15       8.     This Court has *in personam* jurisdiction over each of the Defendants because each  
16 was engaged in an illegal price-fixing scheme and conspiracy that was directed at and/or caused  
17 injury to persons and entities residing in, located in, or doing business in the Northern District of  
18 California and throughout the United States.

19       9.      Venue is proper in this judicial district pursuant to 15 U.S.C. §§ 22 and 28 U.S.C.  
20 § 1391(b), (c), and (d) because during the Class Period many of the Defendants resided,  
21 transacted business, were found, or had agents in this district, and because a substantial part of  
22 the events giving rise to Plaintiff's claims occurred, and a substantial portion of the affected trade  
23 and commerce described below has been carried out, in this district.

## PARTIES

10. Plaintiff Jason Gregory Turner is a resident of the State of California. Plaintiff  
purchased Passenger Air Transportation between United States and Japan directly from a

1 defendant during the class period and has suffered pecuniary injury as a result of the antitrust  
 2 violations alleged herein.

3       11. Defendant All Nippon Airways (“ANA”) is a Japanese company with its principal  
 4 place of business at Shidome-City Center, 1-5-2, Higashi-Shimbashi, Minato-ku, Tokyo 105-  
 5 7133, Japan. All Nippon Airways conducts Passenger Air Transportation throughout the world,  
 6 including into the U.S. and especially California.

7       12. Defendant Japan Airlines (“JAL”) is a Japanese company with its principal place  
 8 of business at 4-11, Higashi-Shinagawa 2-chrome, Shinagawa-Ku, Tokyo 140-8605, Japan.  
 9 Japan Airlines International conducts Passenger Air Transportation throughout the world,  
 10 including into the United States, especially California.

11       13. Defendant American Airlines, Inc. (“AA”) is the principal subsidiary of AMR  
 12 Corporation with its principal place of business at 4333 Amon Carter Boulevard, Fort Worth,  
 13 Texas. AA’s operations consist primarily of the transportation of persons, property and mail  
 14 throughout the United States and abroad, including Japan.

#### 15                                  AGENTS

16       14. The acts alleged to have been done by Defendants were authorized, ordered or  
 17 done by their directors, officers, agents, employees, or representatives while actively engaged in  
 18 the management of each of the Defendants’ affairs.

#### 19                                  TRADE AND COMMERCE

20       15. Throughout the Class Period, Defendant ANA, JAL, and AA engaged in the  
 21 continuous and uninterrupted flow of Passenger Air Transportation in international commerce  
 22 throughout the United States and Japan. Defendants’ unlawful activities, as described herein,  
 23 took place within the flow of commerce to passenger flight customers throughout the world, and  
 24 had a direct, substantial and reasonably foreseeable effect upon interstate and international  
 25 commerce in the United States

26       16. As a direct, substantial, and reasonably foreseeable effect upon U.S. interstate and  
 27 international commerce, Defendants ANA, JAL, and AA have reported that they have flown over  
 28

1 a millions passengers on long-haul direct flights between United States and Japan during each  
 2 year of the Class Period.

3 **CLASS ACTION ALLEGATIONS**

4 17. Plaintiff brings this action on his own behalf and as a class action pursuant to  
 5 Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of the following Class:

6 All persons and entities who purchased Passenger Air Transportation that  
 7 included at least one flight segment between the United States and Japan  
 8 directly from Defendants, or any predecessor, subsidiary, or affiliate or  
 business partner of each, at any time during the period between April 15,  
 2003 and August 1, 2007.

9 18. Because such information is in the exclusive control of Defendants, Plaintiff does  
 10 not know the exact number of members of the Class. Due to the nature of the trade and  
 11 commerce involved, however, Plaintiff believes that Class members number at least in the  
 12 hundreds-of-thousands and are sufficiently numerous and geographically dispersed throughout  
 13 the United States and the world so that joinder of all Class members is impracticable.

14 19. There are questions of law or fact common to the Class, which predominate over  
 15 individual issues, including:

16 (a) Whether Defendants engaged in a combination or conspiracy with their  
 17 coconspirators to fix, raise, maintain, and/or stabilize Passenger Air Transportation and Fuel  
 18 Surcharges on such flight segments;

19 (b) The duration of the conspiracy alleged in this Complaint, and the nature  
 20 and character of the acts performed by Defendants in furtherance of the conspiracies;

21 (c) Whether Defendants violated Section 1 of the Sherman Act;

22 (d) Whether Defendants were unjustly enriched;

23 (e) The effect of Defendants' conspiracy caused injury to the businesses or  
 24 property of Plaintiff and the members of the Class;

25 (f) Whether Defendants fraudulently concealed the alleged conspiracy so as  
 26 to equitably toll any applicable statute of limitations;

27 (g) Whether damages can be shown on a class-wide basis; and

1                         (h)     The appropriate measure of damages sustained by Plaintiff and other  
 2 members of the Class;

3                         (i)     Plaintiff will fairly and adequately protect the interests of the Class and the  
 4 interests are coincident with and not antagonistic to those of other members of the Class.  
 5 Plaintiff is represented by counsel competent and experienced in the prosecution of complex  
 6 litigation, including antitrust class action litigation.

7                         (j)     A class action is superior to other available methods for the fair and  
 8 efficient adjudication of this controversy. The prosecution of separate actions by individual  
 9 members of the Class would create a risk of inconsistent or varying adjudications, establishing  
 10 incompatible standards of conduct for Defendants.

11                         (k)     The Classes are readily definable and ascertainable through corporate  
 12 records.

13                         **DEFENDANTS' DIFFERENT FUEL HEDGING STRATEGIES**  
 14                         **UNDERSCORES THEIR ANTICOMPETITIVE CONDUCT OF**  
 15                         **ADOPTING AND ADJUSTING FUEL SURCHARGES IN TANDEM**

16                         20.     As alleged herein, Defendants agreed to subscribe to the same index to set fuel  
 17 surcharges despite having different cost structures, including different fuel hedging strategies.

18                         21.     Each Defendant adopted its own fuel hedging strategies, yet, the adoption and  
 19 adjustment of their passenger fuel surcharges in tandem is illogical but for a cartel-like  
 20 agreement between them.

21                         22.     During the Class Period, Defendant ANA engaged in various methods to hedge  
 22 fuel costs and fuel consumption management techniques.

23                         23.     During the Class Period, Defendant JAL engaged in various methods to hedge  
 24 fuel costs and fuel consumption management techniques.

25                         24.     During the Class Period, Defendant AA engaged in various methods to hedge fuel  
 26 costs and fuel consumption management techniques.

1                   **AIR CARRIER TRADE ASSOCIATIONS**  
 2                   **DISCUSS INTERNATIONAL FARES AND FUEL SURCHARGES**

3                 25. The International Air Transportation Association ("IATA") is an organization that  
 4                 includes most of the world's international airlines, including Defendants. See,  
<http://www.iata.org/about/index>.

5                 26. During the relevant time period, Defendants were all members of IATA.

6                 27. During IATA conferences, member firms discussed the increasing costs of fuel,  
 7                 passenger fuel surcharges, maintaining yields, and other issues relating to the conservation of  
 8                 fuel.

9                 28. The Star Alliance is a global integrated airline network founded in 1997. Current  
 10          Star Alliance members are Air Canada, Air New Zealand, All Nippon Airways, Asiana, Austrian  
 11          Airlines Group, LOT Polish Airlines, Lufthansa, Scandinavian Airlines, Singapore Airways,  
 12          South Africa Airways, Spanair, Swiss, TAP Portugal, Thai International Airways, United Air  
 13          Lines, and US Airways.

14                 29. During Star Alliance meetings, member firms discussed the increasing costs of  
 15          fuel, passenger fuel surcharges and maintaining yields.

16                 30. The OneWorld Alliance is a global integrated airline network. Current OneWorld  
 17          Alliance members are AA, British Airways, Cathay Pacific, Finnair, Iberia, JAL, LAN, Qantas,  
 18          and Royal Jordanian.

19                 31. During Star Alliance meetings, member firms discussed the increasing costs of  
 20          fuel, passenger fuel surcharges and maintaining yields.

**THE DEPARTMENT OF JUSTICE'S INVESTIGATIONS**

22                 32. On February 14, 2006, Asian, European, and US antitrust authorities conducted  
 23          raids throughout the United States and the world at the offices of the various international airline  
 24          offices in Asia, Europe, and the United States.

25                 33. These investigations include international air cargo and long-haul international  
 26          passenger flights, including flights in and out of the United States.

1       34. On June 20, 2006, AA received a grand jury subpoena from the DOJ requesting  
 2 information relating to certain passenger pricing practices and surcharges applicable to  
 3 international passenger routes.

4       35. During May 2007, at the IATA's Cargo Network Service Conference, the United  
 5 States Federal Bureau of Investigations ("FBI") served subpoenas on various airlines. FBI  
 6 agents also interviewed various airline managers at their hotel rooms.

7       36. On August 1, 2007, the DOJ charged a member of the IATA of colluding with  
 8 rivals to fix passenger fuel surcharges for flights between United States and United Kingdom and  
 9 United States and South Korea.

10      37. In its news release, the DOJ said: "The Department also charged that between  
 11 August 2004 and February 2006, British Airways engaged in a conspiracy to suppress and  
 12 eliminate competition by fixing the Fuel Surcharge charged to passengers on long-haul  
 13 international flights, including *flights between the United States and the United Kingdom.*"  
 14 (emphasis added).

15      38. The DOJ also acknowledged that *Lufthansa and Virgin Atlantic had agreed to*  
 16 *cooperate* in the "*ongoing*" investigation and have been conditionally accepted into the Antitrust  
 17 Division's Corporate Leniency Program.

18      39. To date, the DOJ has successfully obtained the guilty pleas from British Airways,  
 19 Korean Air Lines, and Qantas Airways Limited.

20      **DEFENDANTS' CONCERTED INCREASES OF PASSENGER FUEL SURCHARGES**  
 21      **ON ROUTES BETWEEN THE UNITED STATES AND JAPAN MARKET**

22      40. Defendants were aware that their imposition of fuel surcharges and other  
 23 surcharges would not be successful if their supposed competitors did not join them; otherwise,  
 24 customers would be free to seek out lower prices. For this reason, Defendants entered into  
 25 agreements to adopt and adjust passenger fuel surcharges at the same times and following the  
 26 scale.

1       41. The International Air Transportation Association ("IATA") is an organization that  
 2 includes most of the world's international airlines, including Defendants. See,  
 3 <http://www.iata.org/about/index>.

4       42. During IATA conferences, member firms discussed the increasing costs of fuel,  
 5 passenger fuel surcharges, maintaining yields, and other issues relating to the conservation of  
 6 fuel.

7       43. After a March 17 and 18, 2003, IATA meeting in Geneva, Switzerland, where  
 8 Defendants attended, ANA and JAP announced that effective April 15, 2003, they would  
 9 increase base fares by 3%. (*Air Fares on the move*, Daily Telegraph, March 21, 2003) ("IATA  
 10 held talks in Geneva on Monday and Tuesday and decided to raise the regular fares of member  
 11 airlines by 3 per cent in principle" due to the exceptional cost increases, Tatsuo Yoshimura,  
 12 spokesperson said... ANA confirmed the same increase amount).

13       44. During a press conference, JAL President Isao Kaneko said that JAL would  
 14 consider raising international flight fares and that details of its intentions to do so would be  
 15 discussed at a meeting of the May 28 IATA meeting. Mr. Kaneko further added that JAL hoped  
 16 to raise its fares by a few percentage points. (*JAL Group to Mull International Fare Hike*, Jiji  
 17 Press, May 26, 2004).

18       45. After a May 28, 2004 IATA meeting in Geneva, Switzerland, where Defendants  
 19 attended, on June 8, 2004, ANA and JAL informed their aviation regulator that effective July 1,  
 20 2004, they would increase base fares by 5%. (*JAL to introduce fuel levy*, PNG Post-Courier,  
 21 June 2, 2004 (The move came after IATA decided on the fare rise at a meeting on Friday, JAL  
 22 spokesman Hirohide Ishikawa said. We plan to follow the IATA decision as a member, he  
 23 said... ANA spokesman Fumiyoishi Fukumori, indicated that ANA would also raise international  
 24 fares in July), and *News Release, Announcement of fare increases based upon IATA Meeting of*  
 25 *May 28*, ANA North America, June 8, 2004). *See also, Fare Hike Ahead, Aviation Week &*  
 26 *Space Tech.*, June 21, 2004 (ANA and JAL sought approval of and received a 5% fare increase  
 27 and at the same time) and *Executive Travel in Asia this Week*, PR Newswire, June 9, 2004  
 28

1 ("Both Japan's leading carrier Japan Airlines and rival All Nippon Airways yesterday filed an  
 2 application for approval to raise fares on international routes to and from Japan."), and, *JAL*  
 3 *Raise International Fares by 5 pct*, Jiji Press, June 8, 2004 (ANA and JAL independently filed  
 4 applications with Ministry on the same day)).

5       46. At the time that ANA and JAL announced their intentions to adopt passenger fuel  
 6 surcharges effective June 2004, Defendant AA and other members of OneWorld Alliance re-  
 7 introduced passenger fuel surcharges. (*Oil prices hit airlines hard*, Travel Digest, June 1, 2004).

8       47. After an August 30 - September 1, 2004 IATA meeting in Tokyo, Japan, where  
 9 Defendants attended, ANA and JAL announced that effective October 1, 2004, they would  
 10 increase base fares by 5%. (*JAL, All Nippon Likely to Raise Fares*, China Daily, September 29,  
 11 2004 ("The two carriers plan to apply to Japan's transport ministry to raise fares after the IATA  
 12 consented to the move in Geneva earlier this month, the airlines' spokesmen said... We're  
 13 considering seeking about a 5 percent fare increase."), *see also, Japan-Europe airfares to rise*  
 14 *5% from Jan 15 due to higher oil prices*, AFX UK Focus, September 28, 2004 ("It said both JAL  
 15 and ANA did not pass on the full 5 percent rate hike on international routes approved [by the  
 16 IATA] in July out of concern that doing so would hurt ticket sales during the summer travel  
 17 season.")).

18       48. During October 2004, AA adopted a \$10 passenger fuel surcharge on its flights.  
 19 After no competitors followed-suit, AA was forced to drop the passenger fuel surcharge the  
 20 following week. In the alternative, AA followed ANA and JAL's adjustments to base fares.  
 21 (*Fuel Surcharges meet mixed futures*, Airline Business, November 1, 2004)

22       49. On October 28, 2004, ANA and JAL both announced that effective February 1,  
 23 2005, they would adopt \$24 (or 2,500 Yen) fuel surcharges per segment for long-haul flights  
 24 between United States and Japan. (*JAL, ANA to raise airfares on soaring crude oil prices*, Japan  
 25 Transportation Scan, November 1, 2004 (JAL and ANA announced on Thursday, October 28,  
 26 2004), *News Release, ANA to Introduce Fuel Surcharges for International Flights*, ANA North  
 27  
 28

1 America, January 5, 2005, and, *JAL slaps 500 yen surcharge on international airfares*, Daily  
 2 Yomiuri, December 26, 2004).

3       50. On December 9, 2004, it was reported that AA would also adopt a \$20-25 fuel  
 4 surcharge per segment on long haul flights to Japan effective January 2005. (*Fuel Surcharge may*  
 5 *be imposed by some airlines serving Japan*, Asia in Focus, December 9, 2004).

6       51. On February 10, 2005, ANA and JAL both announced their intention to raise  
 7 long-haul fares between United States and Japan by 2%, effective April 1, 2005. It was reported  
 8 that ANA and JAL's decision to raise prices followed a decision made during an IATA meeting.  
 9 (*JAL, ANA to raise fares on international routes by 2% on April 1*, Japan Transportation Scan,  
 10 February 14, 2005).

11       52. On June 7 and 10, 2005, ANA and JAL, following their attendance at an April 4,  
 12 2005 meeting in New York City, informed their aviation regulator of their intention that effective  
 13 July 1 and 7, 2005, they would adjust base fuel surcharges to \$48 (or 5,000 Yen) per segment for  
 14 long-haul flights between United States and Japan. (*JAL Head Says Will Not Hike Domestic*  
 15 *Fares*, AFX Asia Focus, June 14, 2005 (JAL and ANA last week announced plans to hike  
 16 international fares in July due to high fuel prices) and *ANA to raise fares on international routes*  
 17 *July 7*, Japan Economic Newswire, June 7, 2005, *see also*, *News Release, Japan Airlines*  
 18 *Increases International Passenger Fare Fuel Surcharges – effective July 1*, JAL, June 3, 2005,  
 19 and *News Release, ANA to Increase Fuel Surcharges for International Flights*, ANA North  
 20 America, June 7, 2005).

21       53. On August 17, 2005, AA announced its intention to adjust passenger fuel  
 22 surcharges by \$10 per segment on long-haul flights between United States and Japan.

23       54. On December 9, 2005, it was reported that ANA and JAL announced their  
 24 intention that effective April 1, 2006, they would adjust base fares up 8,000 Yen. (*Japan JAL to*  
 25 *Raise Air Fares in April 2006*, Japanese Business Digest, December 9, 2005). On December 21,  
 26 2005, JAP informed its aviation regulator of its intention. (*Press Release*, JAL, December 21,  
 27 2005).

28

1       55. On January 16 and 23, 2006, JAL and ANA announced their intention that  
 2 effective March 1, 2006, they would adjust base fuel surcharges to \$66 (or 8,000 Yen) per  
 3 segment for long-haul flights between United States and Japan. (*Press Release*, JAL, January 16,  
 4 2006).

5       56. On April 12, 2006, it was reported that AA announced its intention that it would  
 6 adjust fuel surcharges to \$65 per segment for long-haul transpacific flights excluding Japan.  
 7 (*Airlines raise fuel surcharges*, FT.com, April 12, 2006).

8       57. During a June 5, 2006 IATA meeting in Paris, France, IATA GEO Giovanni  
 9 Bisignani, applauded the air carrier attendees for using passenger fuel surcharges to combat high  
 10 oil prices. (*Concerns Over Industry Performance Grow at IATA AGM*, Aviation Daily, June 6,  
 11 2006).

12       58. On August 17 and 31, 2006, JAL and ANA informed their aviation regulator of  
 13 their intention to adjust their base fuel surcharges effective October 1 and 5, 2006. After a  
 14 September 2006 IATA meeting in Geneva, Switzerland, where Defendants attended, which JAL  
 15 discussed increasing fuel surcharges, JAP and ANA followed through with their intentions and  
 16 adjusted base fuel surcharges to \$113 (13,600 Yen) per segment for long-haul flights between  
 17 the United States and Japan. (*JAL Applies for Increase in International Passenger Fare Fuel*  
 18 *Surcharges*, Japan Corporate News, August 17, 2006, and *News Release, ANA to Raise*  
 19 *International Fuel Surcharges*, ANA North America, August 31, 2006), see also, *JAL Seeks*  
 20 *Higher Fuel Surcharges for International Flights in October*, Asia Pulse, August 18, 2006 ("JAL  
 21 on Thursday sought approval from the Transport Ministry to raise its fuel surcharge on fares for  
 22 international flights starting Oct. 1... ANA is expected to follow..."), and, *ANA, following JAL,*  
 23 *to raise international fares Oct. 5, second time in 6 months*, Japan Economic Newswire Plus,  
 24 August 31, 2006 (ANA said Thursday it applied to the aviation regulator to raise fares on its  
 25 international routes Oct. 5).

26       59. On November 16, 2006, ANA and JAL announced their intention to reduce  
 27 passenger fuel surcharges on long-haul flights between United States and Japan, effective  
 28

1 January 2007. (*JAL, ANA decide to lower international fares from January on falling fuel costs,*  
 2 Japan Transportation Scan, November 20, 2006).

3       60. On December 26, 2006, ANA and JAL announced their intention to raise fares by  
 4 5% to 7% on long-haul flights between United States and Japan, effective April 1, 2007. (*JAL,*  
 5 *ANA plan 5-7% hike in international air fares from April*, Japan Transportation Scan, January 1,  
 6 2007).

7       61. On May 15 and 25, 2007, JAL and ANA informed their aviation regulator of their  
 8 intention that effective July 1 and 10, 2007, they would adjust base fuel surcharges to \$100 (or  
 9 12,000 Yen) per segment for long-haul flights between United States and Japan. (*ANA Sets New*  
 10 *International Fuel Surcharge*, Japan Corporate News, May 25, 2007, *News Release*, *JAL Revises*  
 11 *International Passenger Fare Fuel Surcharges*, JAL, May 15, 2007, and *News Release*,  
 12 *International Fuel Surcharges Set to Rise*, ANA North America, May 25, 2007).

13       62. But for Defendants' anti-competitive conduct, Defendants would have been  
 14 unable to perpetrate the extent to which they increased the prices of their fares and fuel  
 15 surcharges.

#### FRAUDULENT CONCEALMENT

17       63. Throughout the relevant period, Defendants and their co-conspirators  
 18 affirmatively and fraudulently concealed their unlawful conduct against Plaintiff and members of  
 19 the Class.

20       64. Plaintiff and the members of the Class did not discover, and could not discover  
 21 through the exercise of reasonable diligence, that Defendants were violating the antitrust laws as  
 22 alleged herein until August 1, 2007. Nor could Plaintiff and the members of the Class have  
 23 discovered the violations earlier than that time because Defendants and their co-conspirators  
 24 conducted their conspiracy in secret, concealed the nature of their unlawful conduct and acts in  
 25 furtherance thereof, and fraudulently concealed their activities through various other means and  
 26 methods designed to avoid detection. The conspiracy was by its nature self-concealing.

65. Only on or about August 1, 2007, when the DOJ announced its antitrust charges against British Airways and Korean Air regarding their membership of cartels for the purpose of fixing the price of passenger fuel surcharges, was the existence of any fuel surcharge conspiracies disclosed to the public.

66. Plaintiff and the members of the Class could not have discovered the unlawful conduct at an earlier date through the exercise of reasonable diligence because of Defendants' active and purposeful concealment of its unlawful activities.

67. As a result of Defendants' fraudulent concealment of their conspiracy, Plaintiff and the members of Class assert the tolling of any applicable statute of limitations affecting the rights of action of Plaintiff and the members of the Class.

**COUNT I**  
**VIOLATIONS OF THE SHERMAN ACT**

68. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint. During the relevant period, Defendants and their co-conspirators engaged in a continuing agreement, understanding, and conspiracy in restraint of trade to implement, artificially raise, fix, maintain, and/or stabilize the prices of fares between April 15, 2003 and August 1, 2007 and passenger fuel surcharges between February 1, 2005 and August 1, 2007, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

69. Pursuant to Sections 4 and 16 of the Clayton Act, Plaintiff and members of the Class seek injunctive relief, and treble damages, and any such other relief that the Court may deem necessary and appropriate.

70. In formulating and effectuating the alleged contract, combination, or conspiracy, Defendants and their co-conspirators engaged in anti-competitive activities, the purpose and effect of which were to artificially raise, fix, maintain, and/or stabilize the prices of base fares and related passenger fuel surcharges.

1       71. During the Class Period, Plaintiff and members of the Class purchased base fares  
 2 and related passenger fuel surcharges directly from Defendants and their co-conspirators (or their  
 3 respective agents, predecessors, subsidiaries, affiliates, and/or business partners).

4       72. The illegal combination and conspiracy alleged herein had the following effects,  
 5 among others:

6                 (a) price competition in the pricing of base fares and related passenger fuel  
 7 surcharges, and, consequently, the prices of which has been restrained, suppressed, and/or  
 8 eliminated;

9                 (b) prices charged by Defendants for base fares and related passenger fuel  
 10 surcharges were fixed, raised, maintained, and/or stabilized at artificially high, non-competitive  
 11 levels;

12                 (c) prices paid by Plaintiff and other members of the Class for base fares and  
 13 related passenger fuel surcharges charged by Defendants have been fixed, raised, maintained,  
 14 and/or stabilized at artificially high, non-competitive levels by the fixing of prices of base fares  
 15 and passenger fuel surcharges; and

16                 (d) Defendants refused to engage in price competition for passenger fuel  
 17 surcharges.

18       73. Defendants' anticompetitive activities and their effects are in violation of the  
 19 Sherman Act.

20       74. During the Class Period, Defendants sold base fares for travel between United  
 21 States and Japan in a continuous and uninterrupted flow of interstate and foreign commerce.  
 22 Defendants received payment for such services across state boundaries. Defendants' activities,  
 23 and the sale of their services, have both taken place within, and have had a substantial  
 24 anticompetitive effect upon, interstate commerce within the United States.

25       75. Pursuant to Sections 4 and 16 of the Clayton Act, Plaintiff and members of the  
 26 Class seek injunctive relief, and treble damages, and any such other relief that the Court deems  
 27 necessary and appropriate.

76. Plaintiff and other members of the Class have been required to pay more for base fares and related passenger fuel surcharges than they would have paid in a competitive marketplace absent Defendants' price-fixing cartel.

77. During the Class Period, Defendants' conspiracy as described herein caused Plaintiff and the members of the Class to pay artificially inflated prices. As a result, Plaintiff and the members of the Class have been injured and damaged in their business and property in an amount to be determined.

78. As a direct and proximate result of Defendants' illegal conspiracy, Plaintiff and the other members of the Class have been injured and financially damaged in their respective businesses and property, in that they have paid artificially inflated prices during the Class Period that they would not have paid in the absence of the illegal conspiracy.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff and the Class request as follows:

A. The Court determine that this action may be maintained as a class action under Rule 23(a) and (b) (3) of the Federal Rules of Civil Procedure:

B. The Court adjudge and decree that the contract, combination and conspiracy alleged herein is a per se unreasonable restraint of trade in violation of Section 1 of the Sherman Act:

C. Judgment be entered against Defendants, jointly and severally, and in favor of Plaintiff and the Class for damages as allowed by law and as determined to have been sustained by them:

D. Each of the Defendants, successors, assigns, parents, subsidiaries, affiliates and transferees, and their respective officers, directors, agents and employees, and all other persons acting or claiming to act on behalf of Defendants or in concert with them, be permanently enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing the combinations, conspiracy, agreement, understanding or concert of action, or

1 adopting any practice, plan, program or design having a similar purpose or effect in restraining  
2 competition;

3 E. The Court award Plaintiff and the Class attorneys' fees and costs, and pre-  
4 judgment and post-judgment interest as permitted by law; and

5 F. The Court award Plaintiff and the Class such other and further relief as may be  
6 necessary and appropriate.

**JURY TRIAL DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all of the claims asserted in this Complaint so triable.

DATED: March 13, 2008

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